

# WHAT'S NEW – EMPLOYMENT PRACTICES AND FIDUCIARY LIABILITY PRODUCT ENHANCEMENTS



## ENHANCED COVERAGE. SIMPLIFIED OPTIONS. UNMATCHED PROTECTION.

- ▶ Modular employment practices liability (EPL) and fiduciary coverage forms
- ▶ Full web quoting experience in USLI-SNAP
- ▶ Refreshed rate filing and flexible retentions
- ▶ Enhanced Fair Labor Standards Act (FLSA) sublimit, including defense costs and indemnity (all states excluding California and Florida) and defense costs only coverage (Florida)
- ▶ Workplace Violence Expense Sublimit endorsement for eligible risks
- ▶ Defense Expense for Immigration Claims endorsement for eligible risks
- ▶ Addition of timely notice and resolution incentive (up to \$10,000)
- ▶ Addition of lifetime occurrence reporting provision in EPL coverage form for directors and officers of the insured organization
- ▶ Now offering third-party liability coverage for eligible private country clubs
- ▶ Bodily injury and property damage exclusion carve back
- ▶ Option for Settlor coverage via endorsement for fiduciary liability
- ▶ Plan included in the definition of insured for fiduciary liability
- ▶ Voluntary settlement program coverage provides coverage for plan participation in all voluntary settlement programs including any fees, fines, penalties or sanctions paid for by the plan for their inadvertent noncompliance with any statute, rule or regulation (\$150,000 sublimit)
- ▶ Expanded definition of claim in EPL form
- ▶ Expanded definition of wrongful employment act
- ▶ Broadened definition of harassment and discrimination
- ▶ Expanded reporting threshold for subsidiaries acquired midterm
- ▶ Extended reporting period purchase time extended to 60 days
- ▶ Cancellation for nonpayment increased to 20 days' notice
- ▶ Definition of employee revised to include "any natural person past, present or prospective"
- ▶ Claim reporting: increased to 90 days post-expiration when extended reporting period (ERP) is not purchased
- ▶ Hammer clause: softened to 80/20 in favor of the insured (previously 75/25)
- ▶ Liberalization clause added
- ▶ Revised change in control provision (no longer fully earned)

This document does not amend, extend or alter the coverage afforded by the policy. For a complete understanding of any insurance you purchase, you must first read your policy, declaration page and any endorsements and discuss them with your agent. A sample policy is available from your agent. Your actual policy conditions may be amended by endorsement or affected by state laws. USLI companies are members of the Berkshire Hathaway family of companies and have an A++ Superior rating for financial stability from AM Best. The insuring company names are United States Liability Insurance Company, Mount Vernon Fire Insurance Company, and U.S. Underwriters Insurance Company.

# Fiduciary Liability Insurance – Why Do I Need It?



1-888-SPD-USLI

## WHO IS A FIDUCIARY?

- ▶ A fiduciary is any director, officer or trustee or any past, present or future employees of an organization who are fiduciaries as defined in ERISA with respect to any plan
- ▶ This includes anyone who exercises any discretionary authority or discretionary control in managing the plan, or exercises any authority or control in managing or disposing of assets or renders investment advice with respect to any monies or other property belonging to the plan

## WHAT IS FIDUCIARY LIABILITY INSURANCE?

Fiduciary liability insurance is a policy designed to protect the organization and its plan fiduciaries in the design, administration or management of its pension, health, welfare and employee benefits plans from legal liability arising out of decisions made in their role as plan fiduciaries

- ▶ Fiduciary liability insurance provides coverage for:
  - Assets of retirement and welfare plans offered by an insured
  - Assets of the named insured
- ▶ Plans subject to ERISA include pensions plans, profit sharing plans and 401(k) plans

## WHAT CAN A FIDUCIARY CLAIM LOOK LIKE?



### Excessive Fee Litigation

When a plan agrees to pay a third party service provider, such as an investment manager or plan administrator, to assist with their plan but fails to continuously manage and monitor the firm's fees to ensure they are reasonable, the fiduciary can be found in breach of their duty of loyalty by paying excessive fees out of plan assets.



### Imprudent Investment

When a high percentage of the pension fund's assets are invested in a single outside company's common stock, the plan may then suffer a severe loss when the stock is rendered worthless if that company files for bankruptcy.



### Failure to Timely Follow Employee's Investment Instructions

If an employee gives their plan administrator instructions to change an investment option in their plan and there is a delay in doing so, which results in their current investment taking a loss, the participant can seek relief from the plan for their principal and investment loss.



### Investment in High Risk Funds

When a large percentage of a plan's assets are invested in high risk or volatile stocks, a downturn in the market may cause the plan to suffer a significant financial loss that may threaten its overall viability.

## WHAT DO YOU RECEIVE WHEN YOU AGREE TO PURCHASE FIDUCIARY LIABILITY INSURANCE FROM USLI?

- ▶ Coverage for defense costs, settlements, judgments, compensatory damages and punitive damages (to the extent insurable) for the decisions of the organization and its plan fiduciaries on behalf of their sponsored plans
- ▶ Competitive pricing starting as low as \$400 based on plan assets, type of plan and number of plan participants

**The applicant must be the sole sponsor of the plan. We are not a market for a multiemployer plan or an Employee Stock Ownership Plan (ESOP).**

PLEASE CONFIRM THE FOLLOWING INFORMATION TO RECEIVE A FORMAL QUOTE SUBJECT TO A FULL APPLICATION IN ORDER TO BIND:

Name of applicant:	
Address:	
Nature of operations:	
<b>FIDUCIARY PLAN BREAKDOWN</b>	
Plan type	
Total plan assets	
Number of plan participants	

To receive a bindable quote, email this completed indication form to [proflines@usli.com](mailto:proflines@usli.com). Not all classes are eligible.

# Employment Practices and Fiduciary Liability

- Up to 500 employees (part time and seasonal count as half an employee; applicant must have a minimum of three employees to be eligible)
- Eligible classes include, but are not limited to:



Accounting firm	Car wash	Credit operation*	Insurance agent (not USLI appointed)	Recreation/Membership organization
Advertising firm	Caterer	Day care center (commercial)	Insurance company*	Restaurant (fast food)†
Air/Heat contractor	Cemetery/Funeral home	Doctor/Dentist*	Landscaper	Retail store
Ambulance service*	Condo/Homeowner associations	Drug rehab center (outpatient only)	Law firm (maximum of 50 employees)	Sales/Distributor
Architect	Consultant	Employment agency	Maintenance/Janitorial	Security guard firm*
Artisan contractor	Convenience store	Engineer	Nursing home/Assisted living*	School
Auto dealer* (maximum of 200 employees)	Counseling center	Fitness center	Plumber	Technology
Bank-US owned*	Country club (private)	Grocery store/ Supermarket	Printer/Publisher	Transportation/Trucking
Bowling lane	Country club (public/municipal)	Hair salon	Property manager	Travel agent
Camp	Campground	Hotel/Motel owner (minimum of 10 employees)	Real estate agency*	Veterinary clinic

\*Not eligible for third-party coverage option

†Ineligible for Fiduciary

## PRODUCT ADVANTAGES

- Fair Labor Standards Act (FLSA): \$100,000 sub-limit for defense costs and loss (available to most accounts in most jurisdictions; Florida risks eligible for defense-costs coverage only)
- Ability to package Fiduciary Liability coverage with Employment Practices Liability or stand-alone
- Workplace Violence and Kidnap Expense sublimit (subject to class eligibility)
- Immigration Expense sublimit (subject to jurisdiction and class eligibility)
- Third Party Liability coverage automatically included in most EPL coverage forms (subject to class eligibility)
- Defense and Settlement Provision (“hammer clause”) softened to cover 80% of defense costs and loss after insured’s final refusal to consent to settle a claim
- Defense outside the limit up to 200 employees if a \$500,000 limit or higher is purchased (does not apply to violations of FLSA)
- Lifetime Occurrence Reporting Provision (Directors/Officers only)
- Timely Notice and Resolution incentive
- Full prior acts coverage for claims-free accounts in most states and for most classes
- Punitive damages with most favorable venue wording included in the definition of loss (available in most jurisdictions)
- Independent contractors included in the definition of employee
- Bodily Injury/Property Damage exclusion carve back
- Defense costs coverage for breach of express employment contract and claims involving modification of real property
- Flexible retention options
- Retaliation carve backs for many exclusions



## PRODUCT ADVANTAGES (CONT.)

- ▶ Fiduciary Liability
  - Coverage for civil penalties under section 502 (i) and 502 (l) of ERISA and civil penalties under HIPAA's privacy laws
  - Voluntary Settlement Program coverage: \$150,000 sublimit for voluntary settlement program costs and defense costs
  - Optional Settlor coverage available
  - Defense outside the limits for risks that purchase at least \$500,000 in coverage

## AVAILABLE LIMITS

- ▶ Employment Practices Liability up to \$5 million
- ▶ Fair Labor Standards Act (FLSA) included at \$100,000 in most jurisdictions (defense and indemnity)
- ▶ Fiduciary Liability up to \$5 million
- ▶ Voluntary Settlement Program coverage: \$150,000 sublimit for voluntary settlement program costs and defense costs

## RETENTIONS

- ▶ Employment Practices Liability retentions start at \$1,000 and vary by state, city and class
- ▶ Fiduciary Liability limits start at \$0 and vary by state, city, and class

## MOST COMMON INELIGIBLE RISKS CHARACTERISTICS

- ▶ Over 500 employees
- ▶ More than two employment practices claims or circumstances in the last five years
- ▶ Applicants located in LA and WV
- ▶ The following classes of business:

Adult entertainment	Construction company	Investment advisor	Repossession service
Agricultural/Farm	Courier service	Municipal (police and fire)	Restaurant (full service)
Aviation	Day care center (residential)	Pawn shop	Stock brokerage and S.E.C. firm
Bar/Tavern	Entertainment industry (radio, television, film)	Personal staff/Family trust	Talent agency (including social media influencer)
Cannabis industry	Foster care	Pension/Other ERISA plans	Taxi/Limousine service (including ride-sharing service)
Casino/Resort	Garment maker	Pharmaceutical company	Union
Coal mine	General contractor	Professional employer organization (PEO)	Venture capital management
College and university	Government agency	Public school/School district	Video game and social media developer (including eSports gaming)
Companion care service	Hospital	Publicly traded company	

Contact your underwriter for more information at **888-523-5545** or visit **usli.com**.

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10/24



### Bring Value to Your Policyholders with Free and Discounted Business Resources

Every USLI policyholder has access to free and discounted resources on the Business Resource Center, which saves them time and money so they can focus on growing their business. Top resources include a free HR consultation helpline, discounted background checks and screenings, industry-specific online training, as well as signage, stationery, and promotional items.



Explore all offerings at **bizresourcecenter.com**